

November 28, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **VoIP E911 Compliance Report (November 28, 2005)**
Eureka Telecom Inc. d/b/a Eureka Networks; WC Docket No. 05-196

Dear Ms. Dortch:

Eureka Telecom Inc. d/b/a Eureka Networks (“Eureka”), through its undersigned counsel and pursuant to Commission Rule 9.5(f), as adopted by the Commission’s *VoIP E911 Order*¹ concerning the enhanced 911 (“E911”) service requirements and conditions applicable to interconnected Voice over Internet Protocol (“VoIP”) service providers, submits this Compliance Report (“Report”) to advise the Commission of the status of Eureka’s efforts to comply with the Commission’s VoIP E911 rules. Eureka also hereby requests an extension of time and limited waiver of the above-mentioned rules for a small segment of the Company’s current VoIP customers and for other very limited circumstances as described below.

Eureka provides local and long distance voice services, high-speed data and Internet access, hosted applications like e-mail and intranets, a full suite of security services including managed firewalls, VPNs and anti-virus programs, and backup services to protect customer data. Eureka’s VoIP platform combines the enhanced features of an IP-PBX, the reliability of traditional PBX platforms and the flexibility of open, standards based networking. With Eureka’s “CommPilot” web portal, users can self-configure and manage their personal services in real time, minimizing support required for service changes. Additionally, users can manage inbound and outbound calls with advanced features such as phone lists and integration with Microsoft Outlook. Eureka serves commercial customers only, typically with five to 250 users, in multiple lines of business. 100% of Eureka’s customer base is commercial—the Company does not market its services to residential customers in any form.

¹ *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking 20 FCC Rcd. 10245 (2005) (“VoIP E911 Order”).*

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Compliance Report

As required by the Commission's rules, as well as the Public Notice issued by the Enforcement Bureau on November 7, 2005² (the "Public Notice"), this Report details Eureka's efforts to provide E911 service to customers in compliance with Commission Rule 9.5(b) and (c), and comply with registered location requirements of Commission Rule 9.5(d).

Further, Eureka notes that the Company has met the requirements of Commission Rule 9.5(e), as the Company notified all customers and obtained 100% affirmative acknowledgments from those customers prior to the Commission's original July 29, 2005 deadline. However, the Company notes that 1% of its VoIP customers, as described more fully below, must still be provided warning labels pursuant to the Commission's rules. Eureka is in the process of obtaining such labels, and will distribute them to the affected VoIP customers. These customers, however, have been provided notification of the limitations of VoIP E911 with their VoIP products pursuant to the Commission's requirements.

Pursuant to the information requested by the Enforcement Bureau in the Public Notice, the Company provides as follows:

- 1) **A quantification, on a percentage basis, of the number of subscribers to whom the Company is able to provide 911 service in compliance with the rules established in the *VoIP 911 Order*.**

As of May 1, 2003, the Company is able to provide compliant VoIP 911 service to 99% of the Company's VoIP subscribers in the Company's service area (LATAs 132 and 224). However, as noted below, to the extent a customer moves their VoIP device out of those LATAs, Eureka is unable to provide VoIP E911 to those customers. However, as described below, Eureka offers a fixed VoIP product to business customers, and has put steps in place to ensure that all customers know of the limitations associated with Eureka's service should a customer move outside of the two above-mentioned LATAs.

- 2) **A detailed statement as to whether the Company is transmitting, as specified in Paragraph 42 of the *VoIP 911 Order*, "all 911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority utilizing the Selective Router, the trunk line(s) between the Selective Router and the PSAP, and such other elements of the Wireline E911 Network as are necessary in those areas where Selective Routers are utilized."**

² *Enforcement Bureau Outlines Requirements of November 28, 2005 Interconnected Voice Over Internet Protocol 911 Compliance Letters*, WC Docket Nos. 04-36 and 05-196, Public Notice, DA 05-2945 (rel. Nov. 7, 2005).

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Eureka is transmitting all 911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority utilizing the Selective Router, the trunk line(s) between the Selective Router and the PSAP, and such other elements of the Wireline E911 Network as are necessary in those areas where Selective Routers are utilized. The only exception to this is when a subscriber moves his or her VoIP device outside of LATA 132 or 224.

3) If the Company is not transmitting all 911 calls to the correct answering point in areas where Selective Routers are utilized, a detailed explanation of why not.

As noted above, Eureka markets its services in LATA 132 and 224 only, and for those two LATAs the Company can transmit all 911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority utilizing the Selective Router, the trunk line(s) between the Selective Router and the PSAP, and such other elements of the Wireline E911 Network as are necessary in those areas where Selective Routers are utilized. 1% of customers in this area, however, are currently not covered by interconnection arrangements providing for VoIP E911 coverage. Further, if a subscriber moves his or her VoIP device outside LATA 132 or 224, the Company cannot route the customer's 911 call properly as the Company lacks interconnection arrangements outside those two LATAs. Eureka customers have been asked to sign a waiver stating that they understand that they must contact Eureka if they are going to move their phone to another location so that the Company may update their location information. If a customer calls and states that they are moving outside of LATA 132 or LATA 224, Eureka informs them that 911 will not work properly and that 911 calls will be routed as if they were still in their original location.

4) The number of Selective Routers to which the Company has interconnected, directly or indirectly, as of November 28, 2005.

As of November 28, 2005, the Company has interconnected to five (5) Selective Routers in LATA 132 and two (2) Selective Routers in LATA 224, all in compliance with ILEC and LERG requirements, either directly or indirectly.

5) A detailed statement as to whether the Company is transmitting via the Wireline E911 Network the 911 caller's ANI and Registered Location to all answering points that are capable of receiving and processing this information.

A call from a customer to 911 is routed to the appropriate Selective Router with Charge Number (CAMA for 911), and CPN/Charge Number (CCSS7 for E911). The PSAP queries the appropriate ALI database, which Eureka updates, for final routing to the proper municipality's Emergency Response Agency.

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- 6) **The percentage of how many answering points within the Company's service area are capable of receiving and processing ANI and Registered Location information that the provider transmits.**

To Eureka's knowledge and belief, 100% of answering points in the Company's service area are capable of receiving and processing ANI and Registered Location information transmitted by the Company.

- 7) **The percentage of subscribers whose ANI and Registered Location are being transmitted to answering points that are capable of receiving and processing this information**

To the Company's knowledge and belief, ANI and Registered Location information is capable of being transmitted to the answering points of 99% of the Company's VoIP customers. Please see Eureka's response to Question 3 above concerning the remaining 1%.

- 8) **If the Company is not transmitting the 911 caller's ANI and Registered Location to all answering points that are capable of receiving and processing this information, a detailed explanation why not.**

Please see Eureka's response to Question 3 above.

- 9) **To the extent the Company has not achieved full 911 compliance with the requirements of the *VoIP 911 Order* in all areas of the country by November 28, 2005, the Company should describe in detail, either in narrative form or by map, the areas of the country, on an MSA basis, where it is in full compliance and those in which it is not.**

Eureka only markets its VoIP services in LATAs 132 and 224. As such, the Company does not need nationwide VoIP E911 capabilities at this time.

- 10) **If not in full compliance, the Company's plans for coming into full compliance with the requirements of the *Order*, including its anticipated timeframe for such compliance.**

Eureka will be contracting with a third-party VoIP E911 provider to become fully compliant by December, 2006.

- 11) **A detailed description of all actions the Company has taken to obtain each existing subscriber's current Registered Location and each new subscriber's initial Registered Location (including, but not limited to, relevant dates and methods of contact with subscribers and a quantification, on a percentage basis, of the number of subscribers from whom the Company has obtained the Registered Location).**

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Eureka has obtained Registered Location information for all of its customers via direct communication between the Eureka account representative and the client. This is done prior to service being turned up. As such, the Company has obtained Registered Location information for 100% of its subscribers.

- 12) A detailed description of the method(s) the Company has offered its subscribers to update their Registered Locations. This information should include a statement as to whether the Company is offering its subscribers at least one option for updating their Registered Location that permits them to use the same equipment that they use to access their interconnected VoIP service.**

Eureka customers have access to a customer care center 24 hours a day, 7 days a week. The Company has asked customers to call the customer care center if they are going to move or have moved their VoIP device. Should this occur, Eureka will update the location information for them if they are moving within LATA 132 or LATA 224. If they are moving outside of LATA 132 or LATA 224 we inform them that 911 will not function properly. The method we have provided the subscribers for updating location information, as described above, allows the subscriber to update location information using only their CPE device.

- 13) A detailed description of any technical solutions the Company is implementing or has implemented to ensure that subscribers have access to 911 service whenever they use their service nomadically.**

As Eureka's VoIP service is inherently fixed, not portable, and serves primarily business customers, the Company has no nomadic customers requiring VoIP E911 coverage. However, as noted above, Eureka will be contracting with a third party VoIP E911 provider to offer subscribers nomadic 911 service should that need arise in the future. As currently planned, this solution will be in service by December, 2006.

- 14) A description of any automatic detection mechanism that enables the Company to identify when a customer may have moved his or her interconnected VoIP service to a new location and ensure that the customer continues to receive 911 service even when using the interconnected VoIP service nomadically.**

Eureka does not have any automatic detection mechanism in place today. For Eureka's type of fixed VoIP service, this feature is not currently technically feasible, although the Company is exploring methods to determine how and when such a capability may become possible.

Request for Limited Waiver and Extension of Time

I. Description of the Service Limitations

Eureka, pursuant to Section 1.3 of the Commission's Rules,³ requests that the Commission grant a limited waiver and extension of time for it to comply with the obligations imposed on Eureka pursuant to Commission Rules 9.5(b) and (c) adopted in the *First Report and Order* in the above-captioned proceedings.⁴ Despite having made substantial progress toward meeting the requirements of the *VoIP E911 Order*, Eureka will be unable to comply fully for 1% of its customers by the November 28, 2005 deadline. Further, although the Company's service is inherently non-portable, it is technologically possible for a customer to move the service outside of Eureka's VoIP E911 footprint.⁵ Accordingly, Eureka requests an 18-month extension of time in order to comply with those obligations. Eureka also requests expedited consideration of this request.

As noted above, Eureka's VoIP service is provided only to business customers, and the company has interconnection agreements in place to provide full VoIP E911 coverage for 99% of its customer base. However, 1% of its customers are located in an area where Eureka has been so far unable to interconnect to the Wireline E911 Network as required under the Commission's *VoIP E911 Order*. Further, while Eureka's service is inherently fixed, it is possible that a customer could move his or her service to an area outside of Eureka's VoIP E911 footprint. In these limited circumstances, Eureka VoIP customers may not have E911 service in compliance with the Commission's rules.

Eureka customers have been fully informed of the limitations associated with these situations (the 1% group has been advised of the limitations of service in their area, and all Eureka customers have signed a waiver concerning the problems that would arise if they moved their service location without informing Eureka). As such, Eureka respectfully requests a limited waiver of the Commission's above-referenced rules with respect to these minor VoIP E911

³ 47 C.F.R. § 1.3.

⁴ *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 & 05-196, FCC 05-116 (released June 3, 2005) ("*VoIP E911 Order*"). Commission Rule 9.5, 47 C.F.R. §§ 9.5, implementing the *VoIP E911 Order* are scheduled to take effect on November 28, 2005.

⁵ Eureka does not highlight the portability of the service in any of its printed marketing materials. If a customer asks if they may use the phone from a location other than the location in which the phone was installed we tell them that they can do so, but request updated location information (and inform them of the lack of 911 service should they move outside of LATA 132 or LATA 224. It is the Company's belief that less than 1% of its subscribers have ever moved their phone from the location in which it was installed.

service gaps, and requests an 18-month extension of time in order to seek a solution to cover these situations.

II. Specific Waivers Requested

Eureka respectfully requests a limited waiver allowing it an 18-month extension of time to implement the following requirements of the *VoIP E911 Order*:

- 1) The requirement to transmit all 911 calls, in all geographic regions served by the Wireline E911 Network, along with the ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority.⁶
- 2) The requirement to route all 911 through the use of ANI and, if necessary, pseudo-ANI.⁷
- 3) The requirement to provide the Registered Location to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.⁸

III. Standard of Review

Section 1.3 of the Commission's Rules states that the Commission may waive its rules for good cause, which has been interpreted to exist when the facts of a particular case make strict compliance inconsistent with the public interest and when the relief requested will not undermine the policy objective of the rule in question.⁹ To prevail, a petitioner must demonstrate that application of the challenged rule would be inequitable, unduly burdensome, or contrary to the public interest.¹⁰ The Commission has also made clear in the wireless E911 context that technical infeasibility and delays beyond the control of the carrier, including the inability to obtain required products or services despite good faith efforts by a petitioner, is reason to grant a waiver.¹¹

⁶ See 47 C.F.R. § 9.5(b)(2).

⁷ See 47 C.F.R. § 9.5(b)(3).

⁸ See 47 C.F.R. § 9.5(b)(4).

⁹ 47 C.F.R. § 1.3. See *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

¹⁰ *Wait Radio*, 418 F.2d at 1159.

¹¹ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No.

IV. Good Cause Exists to Grant Eureka a Limited Waiver

Eureka has established VoIP E911 service for over 99% of its business VoIP customer base. In fact, the Company has only marketed its products in those LATAs (LATA 132 or LATA 224) where it can provide E911 coverage. Because the Company's VoIP service could *potentially* be moved outside those areas, however, the Company seeks this waiver as it currently is unable to provide full nomadic VoIP E911 service nationwide.¹² Further, while the vast majority of its customers are currently provided VoIP E911 service at their Registered Locations, the Company lacks interconnection arrangements to cover the last 1%. The Company is working diligently to cover these customers, and hopes to have full coverage in place no later than December 2006. Given the time and effort Eureka has expended to meet the obligations of the *VoIP E911 Order*, the Company has demonstrated its commitment to providing its customers full E911 services as soon as possible (in fact, the Company provided such coverage several *years* before the issuance of the *VoIP E911 Order*, as detailed above).

Further, strict adherence to the requirements of the *VoIP E911 Order* would be inconsistent with the public interest with respect to Eureka. Eureka has made good faith efforts to comply with the requirements and has made substantial progress toward compliance. Moreover, it has a plan in place that ultimately will enable it to comply fully with the Commission's rules. Although a small portion of the Company's customers lack coverage, the Company has fully informed them of those limitations, and is working to ensure that coverage is made as quickly as possible. Accordingly, a limited waiver of the requirements of the *VoIP E911 Order* with respect to Eureka is necessary and is in the public interest.

V. Conclusion

For the reasons set forth above, Eureka respectfully submits that grant of this request for extension of time and limited waiver serves the public interest.

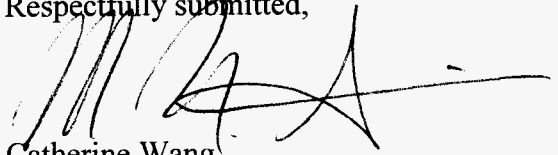
94-102, Order, FCC 05-79, released April 1, 2005 ("*Wireless E911 Tier III Second Waiver Order*") at P 10.

¹² The Company is, however, in the process of contracting with a third-party VoIP E911 provider to establish a nomadic capability. Specifically, Eureka has held discussions with Intrado, TCS Global Crossing, and other vendors regarding their 911 and E911 services. It is Eureka's belief that the Company will have coverage in place for nationwide coverage to cover any nomadic use of the Company's VoIP services, as well as the remaining 1% of uncovered customers in the Company's current service area.

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Respectfully submitted,

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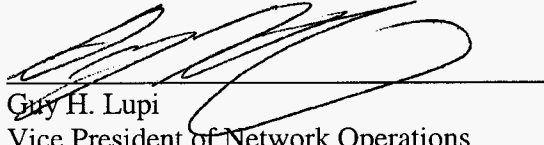
Catherine Wang

Jeffrey R. Strenkowski

Counsel for Eureka Telecom, Inc.
d/b/a Eureka Networks

cc: Byron McCoy (FCC)
Kathy Berthot (FCC)
Janice Myles (FCC)
Best Copy and Printing, Inc.

I, Guy H. Lupi, state that I am Vice President of Network Operations, of Eureka Telecom, Inc. d/b/a Eureka Networks; that I am authorized to submit the forgoing compliance report and request on behalf of Eureka Networks; that the compliance report and request were prepared under my direction and supervision; and I declare under penalty of perjury that the information contained in the request is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Guy H. Lupi', is written over a horizontal line.

Name: Guy H. Lupi

Title: Vice President of Network Operations
Eureka Telecom, Inc. d/b/a Eureka Networks